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DEPARTMENT OF JUSTICE

[CPCLO Order No. 010-2019]

Privacy Act of 1974; System of Records

AGENCY: Federal Bureau of Investigation, United States Department of Justice.

ACTION: Notice of a Modified System of Records.

SUMMARY: Pursuant to the Privacy Act of 1974 and Office of Management and Budget (OMB) Circular No. A-108, notice is hereby given that the Federal Bureau of Investigation (FBI), a component within the United States Department of Justice (DOJ or Department), proposes to modify a system of records notice titled the National Instant Criminal Background Check System (NICS), JUSTICE/FBI-018. The FBI proposes to consolidate and replace the following previous SORNs related to NICS: “National Instant Criminal Background Check System/FBI-018,” published at 63 FR 65223 (Nov. 25, 1998), 65 FR 78190 (Dec. 14, 2000), 66 FR 6676 (Jan. 22, 2001), 66 FR 8425 (Jan. 31, 2001), 66 FR 12959 (Mar. 1, 2001), and 82 FR 24147 (May 25, 2017). This notice also updates the “PURPOSE(S) OF THE SYSTEM,” “CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM,” “CATEGORIES OF RECORDS IN THE SYSTEM,” and “ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES” of the SORN.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), the public has 30 days in which to comment on the routine uses, described below. Therefore, please submit any comments by **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The public, OMB, and Congress are invited to submit any comments: by mail to the Department of Justice, Office of Privacy and Civil Liberties, ATTN: Privacy Analyst, 145 N St., NE, Suite 8W-300, Washington, D.C. 20530; by facsimile at 202-307-0693; or by email at *privacy.compliance@usdoj.gov*. To ensure proper handling, please reference the above CPCLC Order No. on your correspondence.

FOR FURTHER INFORMATION CONTACT: Katherine M. Bond, Assistant General Counsel, Privacy and Civil Liberties Unit, Office of the General Counsel, FBI, 935 Pennsylvania Avenue, NW, Washington, DC 20535-0001; telephone (202) 324-3000.

SUPPLEMENTARY INFORMATION:

The NICS system notice has been amended on several occasions to reflect changes in law and corresponding routine uses. The FBI proposes to consolidate, revise, and update the NICS SORN as required by changes in statutes, regulations, and practice. Proposed changes to the NICS SORN include updating the following sections: “PURPOSE(S) OF THE SYSTEM,” “CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM,” “CATEGORIES OF RECORDS IN THE SYSTEM,” and “ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE”. Due to the number of revisions to this SORN and for ease of reference, the FBI is republishing it here, as revised, in its entirety.

The FBI is revising the “PURPOSE(S) OF THE SYSTEM” section of the notice (1) to provide information regarding additional databases that are used during NICS checks of non-U.S. citizens, (2) to clarify that the NICS System also maintains records for appeal purposes, and (3) to explain that the NICS System provides investigative support to law enforcement agencies that investigate, prosecute, and/or enforce violations of criminal or civil laws or regulations that may come to light during the NICS operation.

In addition, the FBI has revised the “CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM” section of the notice by dividing the former Category L into distinct covered categories for subjects of background checks, appellants, and individuals who have opted into the Voluntary Appeal File. The FBI has also added two categories to cover individuals maintained in the NICS System for law enforcement disclosures as set forth in Routine Use C. An additional category of individuals—and corresponding category of records—has been added to reflect the maintenance of records on individuals who have been granted relief from a firearm disability by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). Maintaining information on individuals granted relief from a firearm disability allows the NICS more expeditiously to approve firearm transfers to these individuals.

The “CATEGORIES OF RECORDS IN THE SYSTEM” section of the notice has been updated to provide more clarity on the types of information the NICS may have on individuals, including the fact that the NICS may contain fingerprints. Fingerprints maintained in the NICS are voluntarily provided by individuals and are used to confirm whether a prospective transferee or appellant matches an individual with a criminal history in the Next Generation Identification (NGI) System. The “CATEGORIES OF

RECORDS IN THE SYSTEM” section is also being updated to include the Voluntary Appeal File, which contains information about individuals who have provided the FBI with written consent to maintain such information so that NICS will not erroneously deny or extensively delay a future firearm transfer; as well as a table, which contains biographic information about individuals under investigation by a law enforcement agency which investigates, prosecutes, and/or enforces violations of criminal or civil laws or regulations that may come to light during the NICS operation. Maintaining identities of individuals within the table allows the NICS to better fulfill its public safety mission and disseminate information under Routine Use C.

Several routine uses have been updated to provide more clarity on the application of existing routine uses. The “ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES” section has also been consolidated to include all existing routine uses that apply to records in the NICS. Furthermore, three new routine uses have been added. The first new routine use (Routine Use N) permits disclosures to parties during litigation and is an extension of the existing routine use to provide information to courts during litigation. This routine use ensures that individuals challenging NICS action have access to relevant and appropriate information in the NICS. The second new routine use (Routine Use O) permits disclosures as required or allowed by Federal regulation, statute, or treaty. This routine use has been added to reinforce the fact that the FBI discloses information pursuant to federal law. The third new routine use (Routine Use P) provides greater clarity on the types of agencies and entities the FBI may contact while conducting research to determine whether an individual may be prohibited from receiving a firearm,

explosive, or related permit. Information disseminated under Routine Use P is limited to the information necessary to elicit from the receiving entity information to assist the NICS section in finalizing a NICS transaction. The FBI will share information from NICS pursuant to the requirements of the Privacy Act, Brady Act, corresponding federal regulations or statutes, and when the disclosure is compatible with the purpose for which the information was collected.

The FBI is also adding more detail in sections such as the “SYSTEM LOCATION” section and the “RECORD SOURCE CATEGORIES” section. The “POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS” section has been modified to provide the record retention schedule job number as assigned by the National Archives and Record Administration (NARA). By referencing the NARA job numbers, individuals will be able to access the actual record retention schedule, which will provide the most complete and up-to-date record retention schedule for the NICS. The “RECORD ACCESS PROCEDURES” and “CONTESTING RECORD PROCEDURES” sections have been updated to reflect the current FBI process for accessing and contesting records. References to the NICS Index have been changed to the NICS Indices to reflect an FBI name change to the database. Other stylistic changes have been made to the notice to conform to the new requirements of OMB Circular A-108.

Despite changes to the system as described in this notice, the FBI continues to assert, and is not changing the Privacy Act exemptions for the system set forth in 28 CFR § 16.96(p) and (q). As stated in the regulations, these Privacy Act exemptions apply only to the extent that information in the system is within the scope of 5 U.S.C. 552a(j)(2),

(k)(2), or (k)(3), and to the extent it is, the rationale for asserting the exemptions has not changed.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and Congress on this notice of a modified system of records.

Dated: September 30, 2019.

Peter Winn,

Acting Chief Privacy and Civil Liberties Officer,

United States Department of Justice.

JUSTICE/FBI-018

SYSTEM NAME AND NUMBER:

National Instant Criminal Background Check System (NICS), JUSTICE/FBI-018

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at the FBI Criminal Justice Information Services (CJIS) Division, 1000 Custer Hollow Road, Clarksburg, West Virginia, 26306, but may be accessible electronically from any location at which the Federal Bureau of Investigation (FBI) operates or at which FBI operations are supported, including: J. Edgar Hoover Building, 935 Pennsylvania Ave., N.W., Washington, D.C. 20535-0001; FBI Academy and FBI Laboratory, Quantico, Virginia 22135; and FBI field offices, legal attaches, information technology centers, and other components listed on the FBI's Internet website, <http://www.fbi.gov>. Some or all system information may also be duplicated at other locations for purposes of system backup, emergency preparedness, and/or continuity of operations. Records may also be maintained in secure cloud computing environments. The cloud computing service provider on the date of this publication is Amazon Web Services, located at 12900 Worldgate Drive, Herndon, VA 20170. Cloud computing service providers may change. For information about the current cloud computing service provider, please contact the Unit Chief, Privacy and Civil Liberties Unit, Office of the General Counsel, FBI, 935 Pennsylvania Avenue NW, Washington, DC 20535-0001; telephone 202-324-3000.

SYSTEM MANAGER(S):

Director, Federal Bureau of Investigation, J. Edgar Hoover FBI Building, 935 Pennsylvania Avenue, NW, Washington, DC 20535-0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

18 U.S.C. 922, as amended by the Brady Handgun Violence Prevention Act (the “Brady Act”) (Pub. L. 103-159, Nov. 30, 1993, codified in relevant part at 18 U.S.C. 922(t) and 34 U.S.C. 40901); the NICS Improvement Amendments Act of 2007 (Pub. L. 110-180, Jan. 8, 2008); Consolidated Appropriations Act (“Fix NICS Act of 2018”) (Pub. L. 115-141, March 23, 2018, codified in relevant part at 34 U.S.C. 40901); 28 U.S.C. 534, as amended (Pub. L. 103-322, Title IV, 4060(a), Sep. 13, 1994, 105 Stat. 1950); and 28 CFR Part 25 Subpart A.

PURPOSE(S) OF THE SYSTEM:

The purpose of the NICS, which was established pursuant to the Brady Act, is to provide the means of checking available information to determine immediately whether a person is disqualified from possessing a firearm under Federal or State law.

Prior to the transfer of a firearm from a Federal Firearms Licensee (FFL), a prospective transferee, who is not licensed under 18 U.S.C. 923, must obtain a firearms transaction form from an FFL and provide the information required by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice. The completed firearms transaction form is returned to the FFL, who is required by the Brady Act to contact the NICS and furnish the name and certain other identifying data provided by the transferee prior to completing the transaction and transferring the firearm. NICS

conducts a search which compares the information about the transferee with information in or available to the NICS.

The NICS Section or a Point of Contact (POC) -- a state or local law enforcement agency serving as an intermediary between the FFL and the federal databases checked by NICS -- receives inquiries from FFLs; initiates NICS background searches; checks—if needed—available Federal, State, local, tribal, foreign, international, and/or other pertinent databases or sources; determines whether prospective transferee records match any available information; determines whether matching records provide information demonstrating that an individual is disqualified from possessing a firearm under Federal or State law; and responds back to the FFLs.

In addition to a review of the NICS Indices (formerly known as the NICS Index), every NICS search includes a review of the pre-existing, separately-managed FBI databases of the National Crime Information Center (NCIC)(JUSTICE/FBI-001) and the Next Generation Identification (NGI) System (JUSTICE/FBI-009), to the extent such searches are possible with the available information. NCIC and NGI are cooperative Federal-State programs for the exchange of criminal history record and other information among criminal justice agencies. The search conducted of NCIC and NGI, in conjunction with the search of the NICS Indices, is to determine whether information indicating that an individual firearm transferee is identical to an individual in one or more of categories A through J listed below under the heading “CATEGORIES OF INDIVIDUALS IN THE SYSTEM.”

The Attorney General directed the FBI to work with the Bureau of Immigration and Customs Enforcement (ICE) to check the immigration status of all non-United States

citizens who are firearms purchasers. When an FFL contacts the FBI NICS Section, the FFL will be asked whether the prospective buyer is a United States citizen. If the prospective buyer is not a United States citizen, the FBI NICS Section will contact ICE to request a search of ICE databases to determine whether the alien is illegally or unlawfully in the United States or whether the individual is a non-immigrant alien and therefore prohibited from receiving a firearm (unless he or she falls within an exception to the non-immigrant alien prohibition).

In addition to maintaining records to assist with NICS checks of potential firearm and explosives transferees, NICS maintains records to process appeals, to ensure individuals who have prevailed on appeal are not delayed in receiving a permissible firearm, and to provide investigative support to law enforcement agencies which investigate, prosecute, and/or enforce violations of criminal or civil laws or regulations that may come to light during operation of the NICS.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The categories of individuals covered by the system include any person who:

- A. Is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
- B. Is a fugitive from justice;
- C. Is an unlawful user of or addicted to any controlled substance;
- D. Has been adjudicated as a mental defective or has been committed to a mental institution;
- E. Is an alien who is illegally or unlawfully in the United States or who has been admitted to the United States under a non-immigrant visa;

- F. Has been discharged from the Armed Forces under dishonorable conditions;
- G. Having been a citizen of the United States, has renounced such citizenship;
- H. Is subject to a court order that restrains the person from harassing, stalking, or threatening an intimate partner or child of such intimate partner (issued after a hearing of which actual notice was received);
- I. Has been convicted in any court of a misdemeanor crime of domestic violence (involving the use or attempted use of physical force committed by a current or former spouse, parent, or guardian of the victim or by a person with a similar relationship with the victim);
- J. Is otherwise disqualified from possessing a firearm under State law;
- K. Is or claims to be a Federal Firearms Licensee (FFL), (i.e., a person licensed by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice, as a manufacturer, dealer, or importer of firearms), or an authorized representative or contact person of an FFL;
- L. Has applied for the transfer of a firearm, explosive, or a related permit or license, or has otherwise had his or her name forwarded to the NICS as part of a request for a NICS background check as authorized by 28 CFR Part 25 or other Federal law. (Identifying information about this category of individuals is maintained for system administration and security purposes in the “NICS Audit Log,” a system transaction log described below under the headings “CATEGORIES OF RECORDS IN THE SYSTEM”);
- M. Has requested the reason for a firearm transfer denial or delay from the FBI, or from a law enforcement agency serving as a POC state, and/or challenged the

accuracy or validity of a disqualifying record, or otherwise inquired about a NICS transaction. (Identifying information about this category of individuals may be maintained in appeal files);

N. Has provided the FBI with written consent to maintain information about himself or herself in the Voluntary Appeal File;

O. Has been granted relief from a firearms or explosives-related disability and/or granted a pardon. For example, in order to permit faster evaluation and approval of future transactions, NICS may maintain information on individuals who have been granted relief by ATF from firearms or explosive disabilities, as well as information on individuals who have been granted a Presidential pardon;

P. Is under investigation by a law enforcement agency which investigates, prosecutes, and/or enforces violations of criminal or civil laws or regulations that may come to light during operation of the NICS;

Q. Is employed by a law enforcement agency which investigates, prosecutes, and/or enforces violations of criminal or civil laws or regulations that may come to light during operation of the NICS; or

R. Processes NICS transactions or has access to the NICS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the NICS may include biographic and biometric information about the categories of individuals above under the heading “CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM,” such as name, phone number, address, email address, sex, race, date of birth, state of residence, a unique identifying number (such as a Social Security number, military number, or number assigned by Federal, State, local, or other

authorities), other personal descriptive data (such as height, weight, eye and hair color, and place of birth), and fingerprints. The NICS also contains information about individuals collected while researching whether a potential transferee is prohibited by Federal or State law from receiving a firearm, explosive, or related permit. This includes documents received from criminal justice and other agencies or entities (e.g. arrest reports, court transcripts, disposition information, involuntary commitments, and court orders).

The “NICS Indices” is a database maintained by the FBI that was created specifically for the NICS. The NICS Indices contains records obtained by the Attorney General from Federal, State, local, tribal, foreign, and international agencies/organizations, or other entities on individuals who fall into the categories of individuals listed above under the heading “CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM” A through J. These records may contain an individual’s name; sex; race; and other personal descriptive data; complete date of birth; state of residence; sometimes a unique identifying number, such as a Social Security number (but NICS does not require it to be furnished), a military number, or a number assigned by Federal, State, local, or other authorities; and other descriptors and information supporting an entry into the NICS Indices, such as information collected as a result of arrest, conviction, incarceration, or involuntary commitment.

The “NICS Audit Log” is a chronological record of system (computer) activities that enables the reconstruction and examination of a sequence of events and/or changes in an event related to the NICS. With regard to a specific NICS transaction, the audit log will include: the name and other identifying information about the prospective

transferee; the type of transaction (inquiry or response); transaction code data elements (e.g., line number and header); time; date of inquiry; Originating Agency Identifier and FFL identifier; inquiry/response data, such as an assigned NICS Transaction Number (NTN) (a unique number assigned to each valid background request inquiry); information found by the NICS Section during research; and the reason for a denial, if an individual is denied. Audio recordings of phone calls from FFLs may also be attached to the corresponding NICS transaction and maintained in the audit log until the transaction purges. In cases of allowed transfers, all identifying information submitted by or on behalf of the transferee in the NICS Audit Log, other than the FFL identity, the NTN, purpose code, source, date of notification, and the date and time the NTN was assigned will be destroyed not more than 24 hours after the FFL receives communication of the determination that the transfer may proceed. All other information, except the NTN and the date it was created will be destroyed after not more than 90 days from the date of the inquiry.

In addition, the NICS contains information on entities or persons that are FFLs (or claim to be). This information includes the FFL name, address, phone numbers, ATF number, access code words, email addresses, date of birth, user names, names of authorized representatives and contact persons, and similar information used by the NICS to identify, validate, and communicate with FFLs in the course of NICS operations.

The NICS also contains “appeals records” which reflect inquiries by individuals regarding the reason for a delay or denial by the FBI or a POC state, and/or challenges to the accuracy or validity of a disqualifying record, or other types of inquiries made by

individuals about a NICS transaction. Appeal records include biographic and biometric records on individuals.

The NICS contains, in the Voluntary Appeal File, record information about individuals who have provided the FBI with written consent to maintain such information so that NICS will not erroneously deny or extensively delay a future firearm transfer. Records in the Voluntary Appeal File may include, but are not limited to, biographic information (e.g. name, address, email address, social security number, and date of birth), fingerprint cards, photographs, court documentation, correspondence, and information contained in the applicant's appeal file, if one exists.

The NICS also contains records of individuals who have been granted relief from a firearms or explosive-related disability and/or granted a pardon. This information may include an individual's name, date of birth, social security number, race, gender, height, weight, and other identification numbers and personal descriptors.

The NICS maintains a table that contains biographic information about individuals described in "CATEGORY OF INDIVIDUALS" P above (e.g. name, date of birth, social security number, other personal descriptive data) and contact information for individuals described in "CATEGORY OF INDIVIDUALS" Q above (such as name and email address).

RECORD SOURCE CATEGORIES:

Information contained in the NICS is obtained from individual persons as well as Federal, State, local, tribal, foreign, and international agencies or organizations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b), all or a portion of the records or information contained in this system of records may be disclosed as a routine use pursuant to 5 U.S.C. 552a(b)(3) under the circumstances or for the purposes described below, to the extent such disclosures are compatible with the purposes for which the information was collected.

A. Limited information may be provided by a POC state or the NICS Section to an FFL who has contacted the NICS concerning a prospective firearm transferee. If a matching record found by the NICS provides information demonstrating that the prospective transferee is disqualified from possessing a firearm under Federal or State law, the FFL will be notified only that the application is “denied,” with none of the underlying information provided. If additional record analysis is required by the NICS representative (e.g., to confirm that a record relates to the potential transferee or to pursue supplemental information to clarify whether the potential transferee is disqualified from receiving a firearm), the response will read “delayed” and will include the NICS-determined date after which the FFL may lawfully transfer the firearm if the FFL has not received a final determination status from NICS. If no disqualifying record is located by the NICS, the FFL will be told that it may “proceed.” A unique identification number will be provided to the FFL for all responses received from the NICS, which number shall be recorded on the firearms transaction form. If an FFL is unable to provide the information required to conduct a NICS check or for other reasons (e.g., the NICS

detects false entries have been made on the ATF 4473 that are not grounds for a deny response), then the NICS check is discontinued and the FFL will be provided with a “canceled” response.

B. Information from the NICS-checked databases may be provided to Federal, State, local, tribal, and territorial criminal justice agencies and organizations, including POC states and contributors of information to the NICS Indices, to enable them to determine whether the transfer of a firearm to any person not licensed under 18 U.S.C. 923 would be in violation of Federal or State law; whether the issuance of a license or permit for the transfer, possession, or sale of a firearm or firearms, or to carry a concealed firearm, or to import, manufacture, deal in, or purchase explosives would be in violation of Federal or State law or regulation; whether appeals should be granted or denied; and whether to add to, delete from, revise, or update information previously provided by the contributor. This includes responding to inquiries by the ATF in connection with civil or criminal enforcement of the Gun Control Act (18 U.S.C. Chapter 44); the National Firearms Act (26 U.S.C. Chapter 53); or 18 U.S.C. Chapter 40 (Importation, Manufacture, Distribution and Storage of Explosive Materials); responding to inquiries from the Nuclear Regulatory Commission (NRC) in connection with the clearance of its licensee and certificate holder security personnel pursuant to the Atomic Energy Act of 1954, as amended, section 161A (42 U.S.C. 2201a); and responding to inquiries from criminal justice agencies regarding the disposition of firearms in their possession.

C. If, during the course of any activity or operation of the system authorized by the regulations governing the system (28 CFR Part 25 Subpart A), any record is found by the system which indicates, either on its face or in conjunction with other information, a violation or potential violation of law (whether criminal or civil) and/or regulation, the pertinent record may be disclosed to the appropriate agency/organization/task force (whether Federal, State, local, tribal, or joint) and/or to the appropriate foreign or international agency/organization charged with the responsibility of investigating, prosecuting, and/or enforcing such law or regulation, e.g., disclosure of information from the system to a law enforcement agency with an active warrant for an individual denied a NICS transaction on the basis of that warrant. (This routine use does not apply to the NICS Indices because access to the information in the NICS Indices is limited to the specific purposes set forth in 28 CFR § 25.6(j).)

D. System records may be disclosed to contractors, grantees, experts, consultants, students, volunteers, detailees, and other non-FBI employees performing or working on a contract, service, grant, cooperative agreement, job, or other assignment for the Federal Government when necessary to accomplish an agency function related to this system of records and under requirements (including Privacy Act requirements) specified by the FBI.

E. System records may be disclosed to the news media or members of the general public or to a victim or potential victim in furtherance of a legitimate law enforcement or public safety function, e.g., to assist in locating fugitives; to provide notification of arrests; to provide alerts, assessments, or similar

information on potential threats to life, health, or property; or to keep the public appropriately informed of other law enforcement or FBI matters of legitimate public interest where disclosure could not reasonably be expected to constitute an unwarranted invasion of personal privacy. (The availability of information in pending criminal cases will be governed by the provisions of 28 CFR 50.2.) (This routine use does not apply to the NICS Indices because access to the information in the NICS Indices is limited to the specific purposes set forth in 28 CFR § 25.6(j).)

F. Where the disclosure of system records has been determined by the FBI to be reasonable and necessary to resolve a matter in litigation or in anticipation thereof, such records may be disclosed to a court or adjudicative body, before which the FBI is authorized to appear, when: (a) the FBI or any FBI employee in his or her official capacity; (b) any FBI employee in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (c) the United States, where the FBI determines it is likely to be affected by the litigation, is or could be a party to the litigation, or has an official interest in the litigation. Similar disclosures may be made in analogous situations related to assistance provided to the Federal government by non-FBI employees (see Routine Use D). This routine use would include disclosures in actual and/or anticipated litigation involving POC states in matters relating to NICS operations.

G. System records may be disclosed to a Member of Congress or staff acting on the Member's behalf when the Member or staff requests the information on behalf of and at the written request of the individual who is the subject of the record.

H. System records may be disclosed to the National Archives and Records Administration for records management inspections and such other purposes conducted under the authority of 44 U.S.C. 2904 and 2906.

I. Information pertaining to individuals who are the subject of a denied transaction by the NICS may be disclosed, either electronically or otherwise, to a Federal, State, local, tribal, joint, foreign, international, or other public agency/organization where such disclosure may promote, assist, or otherwise serve law enforcement interests. By way of example and not limitation, such disclosures may, for instance, include posting all NICS denials on a centralized database that would be electronically accessible to law enforcement agencies.

J. Information in the NICS Audit Log (including records of approved, open, and denied transfers) may be disclosed to the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) in connection with ATF's inspection of FFL records. The information which may be disclosed to the ATF regarding approved and open records is governed by the provisions of 28 CFR Part 25.

K. Pursuant to subsection (b)(3) of the Privacy Act, the Department of Justice may disclose relevant and necessary information to a former employee of the Department for purposes of: responding to an official inquiry by a Federal, State, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from

the former employee regarding a matter within that person's former area of responsibility.

L. To appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that there has been a breach of the system of records; (2) the Department has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DOJ (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

M. To another Federal agency or Federal entity, when the Department determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

N. To an actual or potential party or his or her attorney for the purpose of negotiating or discussing such matters as a settlement of the case or matter, or informal discovery proceedings, in matters in which the FBI has an official interest and in which the FBI determines records in the system to be arguably relevant.

O. To such recipients and under such circumstances and procedures as are required or allowed by Federal regulation, statute, or treaty.

P. To a Federal, State, local, tribal, territorial, or foreign governmental agency when necessary to elicit information from that agency regarding an individual's eligibility to receive a firearm, explosive, or related permit.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Computerized records are stored electronically on hard disk, removable storage devices, in a government approved cloud computing infrastructure (e.g., FedRAMP approved) offered by a cloud service provider (e.g. Amazon Web Services), or other digital media. Some information may be retained in hard copy format.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by name, sex, race, date of birth, state of residence, other personal descriptive data, the NTN, FFL number, and in some instances, unique numeric identifier, e.g., a Social Security number or military identification number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records in this system are maintained and disposed of in accordance with job numbers N1-065-07-003 and N1-065-10-005 of the National Archives and Records Administration.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records in the NICS are located in secure government buildings with limited physical access or in a government approved cloud computing infrastructure (e.g. FedRAMP approved) offered by a cloud service provider (e.g. Amazon Web Services).

Computerized data is password protected. All FBI personnel and contractors are required to pass an extensive background investigation. The information is accessed only by authorized FBI personnel or by non-FBI personnel properly authorized access to these records. Access to the results of a NICS record search is further restricted to authorized employees of Federal, State, and local law enforcement agencies. Paper records are temporarily stored in hard copy until they are scanned into electronic format and stored in the system. The paper records are retained and disposed of as authorized by the National Archives and Records Administration.

When a Federal, State, local, or tribal agency places information in the NICS Indices, it uses its agency identifier and a unique agency record identifier for each record provided to the NICS. Federal, State, local, and tribal agencies can modify or cancel only the data that they have provided to the NICS Indices.

RECORD ACCESS PROCEDURES:

The Attorney General has exempted this system of records from the notification, access, amendment, and contest procedures of the Privacy Act. These exemptions apply only to the extent that the information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j) or (k). Where compliance would not appear to interfere with or adversely affect the purposes of the system, or the overall law enforcement/intelligence process, the applicable exemption (in whole or in part) may be waived by the FBI in its sole discretion.

All requests for access should follow the guidance provided on the FBI's website at <https://www.fbi.gov/services/records-management/foipa>. A request for access to a record from this system of records must be submitted in writing and comply with 28

CFR, Part 16. Individuals may mail, fax, or electronically submit a request, clearly marked "Privacy Act Access Request," to the FBI, ATTN: FOI/PA Request, Record/Information Dissemination Section, 170 Marcel Drive, Winchester, VA 22602-4843; facsimile: 540-868-4995/6/7; electronically: <https://www.fbi.gov/services/records-management/foipa/requesting-fbi-records>. The request should include a general description of the records sought, and must include the requester's full name, current address, and date and place of birth. The request must be signed and dated and either notarized or submitted under penalty of perjury. While no specific form is required, requesters may obtain a form (Form DOJ-361) for use in certification of identity, which can be located at the above link. In the initial request, the requester may also include any other identifying data that the requester may wish to furnish to assist the FBI in making a reasonable search. The request should include a return address for use by the FBI in responding; requesters are also encouraged to include a telephone number to facilitate FBI contacts related to processing the request. A determination of whether a record may be accessed will be made after a request is received.

Alternative procedures are available to a person who has been denied the transfer of, or permit for, a firearm because of information in the NICS. The procedures provide for an appeal of a denial and a method to seek correction of erroneous data searched by or maintained in the system. The alternative procedures can be found at 28 CFR Part 25 Subpart A.

CONTESTING RECORD PROCEDURES:

The Attorney General has exempted this system of records from the notification, access, amendment, and contest procedures of the Privacy Act. These exemptions apply

only to the extent that the information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j) or (k). Where compliance would not appear to interfere with or adversely affect the purposes of the system, or the overall law enforcement/intelligence process, the applicable exemption (in whole or in part) may be waived by the DOJ in its sole discretion.

Individuals desiring to contest or amend information maintained in the system should direct their requests according to the "RECORD ACCESS PROCEDURES" paragraph above. All requests to contest or amend records must be in writing and the envelope and letter should be clearly marked "Privacy Act Amendment Request." All requests must state clearly and concisely what record is being contested, the reason for contesting it, and the proposed amendment to the record. Some information may be exempt from the amendment provisions as described in the "EXEMPTIONS PROMULGATED FOR THE SYSTEM" paragraph, below. An individual who is the subject of a record in this system of records may contest or amend those records that are not exempt. A determination of whether a record is exempt from the amendment provisions will be made after a request is received.

More information regarding the Department's procedures for amending or contesting records in accordance with the Privacy Act can be found at 28 CFR 16.46, "Requests for Amendment or Correction of Records."

In addition, as described above under the "RECORD ACCESS PROCEDURES" section, an alternative procedure is available to a person who has been denied the transfer of, or permit for, a firearm because of information in the NICS, by which the individual

may seek the correction of erroneous data in the system. The procedures are further described at 28 CFR Part 25 Subpart A.

NOTIFICATION PROCEDURES:

This system of records has been exempted from the notification procedures of subsections (d) and (e)(4)(G), to the extent permitted by subsections (j)(2), (k)(2), and (k)(3) of the Privacy Act. Requests for notification should be addressed to the Systems Manager. Requirements for a request are the same as set forth in the “RECORD ACCESS PROCEDURES” paragraph, above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

The Attorney General has exempted this system from subsections (c)(3) and (4); (d); (e)(1), (2), and (3); (e)(4)(G) and (H); (e)(5) and (8); and (g) of the Privacy Act, pursuant to 5 U.S.C. 552a(j)(2). In addition, the Attorney General has exempted this system from subsections (c)(3), (d), (e)(1), and (e)(4)(G) and (H) of the Privacy Act, pursuant to 5 U.S.C. 552a(k)(2) and (k)(3). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c), and (e) and have been published in the Federal Register. See 28 CFR 16.96(p) and (q).

HISTORY:

National Instant Criminal Background Check System (NICS), JUSTICE/FBI-018, 63 FR 65223 (Nov. 25, 1998), as amended by 65 FR 78190 (Dec. 14, 2000), 66 FR 6676 (Jan. 22, 2001), 66 FR 8425 (Jan. 31, 2001), 66 FR 12959 (Mar. 1, 2001), and 82 FR 24147 (May 25, 2017).

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